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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH HARRIS,

Defendant and Appellant.

B269516

(Los Angeles County
Super. Ct. No. PA080230)

APPEAL from an order of the Superior Court of Los Angeles County,
Michael D. Abzug, Judge. Affirmed as modified.

James Koester, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General,
Margaret E. Maxwell and Timothy L. O'Hair, Deputy Attorneys General, for
Plaintiff and Respondent.

Joseph Harris was convicted of both attempted murder (Pen. Code,¹ §§ 187, 664) and assault with a firearm (§ 245, subd. (a)(2)) for shooting a single victim, and he was sentenced to concurrent terms for the two offenses. We agree with the People and Harris that the concurrent three-year term for the assault with a firearm should have been stayed under section 654.

FACTUAL AND PROCEDURAL BACKGROUND

As the sole issue on appeal concerns Harris's sentence, a full recitation of the factual background of this case is unnecessary. Harris shot Joey Cruz and was convicted of attempted murder (count 1) and assault with a firearm (count 2). He was sentenced for the attempted murder to the mid-term of seven years in state prison, plus an additional term of 25 years to life because he had personally and intentionally discharged a firearm, proximately causing great bodily injury. (§ 12022.53, subd. (d).) The court imposed a concurrent term of three years for the assault with a firearm. Harris appeals.

DISCUSSION

Harris contends on appeal that the trial court erred when it sentenced him to a concurrent three-year term on count 2, the assault with a firearm on Cruz, because that conviction arose from the same act that he was punished for in count 1. The Attorney General concedes that this was error, and we agree.

“In general, a person may be *convicted* of, although not *punished* for, more than one crime arising out of the same act or course of conduct.” (*People v. Reed* (2006) 38 Cal.4th 1224, 1226.) Section 654, subdivision (a) provides that “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” Here, both

¹ All further statutory references are to the Penal Code.

the attempted murder and assault with a firearm convictions resulted from one single act—shooting Cruz. Harris’s sentence, which includes prison terms for both convictions, is an unauthorized sentence that violates section 654 and is subject to correction at any time. (*People v. Phong Bui* (2011) 192 Cal.App.4th 1002, 1013, fn. 15.) As the longest potential term of imprisonment is associated with the attempted murder conviction, section 654 requires that Harris be punished for that offense and that the concurrent sentence for the assault with the firearm be stayed.

DISPOSITION

The three-year concurrent term imposed on count 2 is ordered to be stayed and the abstract of judgment amended to reflect the stay. The clerk of the superior court is ordered to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

KEENY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.